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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Principles and practical guidance on the protection of the human rights of migrants in vulnerable situations

Report of the United Nations High Commissioner for Human Rights

Summary

The present report is submitted pursuant to Human Rights Council resolution 35/17, in which the Council requested the United Nations High Commissioner for Human Rights to submit, as co-Chair of the Global Migration Group Working Group on Migration, Human Rights and Gender, principles and practical guidance on the protection of the human rights of migrants in vulnerable situations, on the basis of existing legal norms, and to report thereon to the Human Rights Council at its thirty-seventh session.

While migration can be a positive and empowering experience for individuals and communities and can benefit countries of origin, transit and destination, it is clear that movement that places people in precarious situations is a serious human rights concern. Where migrants fall outside the specific legal category of refugee, it may be particularly important to ensure that their human rights are respected, protected and fulfilled. Some migrants will need specific protection because of the situations they left behind, the circumstances in which they travel or the conditions they face on arrival, or because of personal characteristics such as their age, gender identity, disability or health status. The principles and guidelines, contained in an addendum to the present report, focus on the human rights situation of those migrants who may not qualify as refugees under the Convention relating to the Status of Refugees, yet who are in vulnerable situations and thus in need of, and entitled to, the protection of the international human rights framework.

The principles are drawn directly from international human rights law and related international standards. The guidelines that follow each principle elaborate international best practice and are designed to assist States (and other stakeholders where relevant) to develop, strengthen, implement and monitor measures to protect and promote the human rights of migrants in vulnerable situations. They are derived from the instruments themselves and from authoritative interpretations or recommendations by international human rights treaty bodies and special procedure mandate holders of the Human Rights Council, as well as other expert sources.

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I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolution 35/17, in which the Council requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) to submit, as co-Chair of the Global Migration Group Working Group on Migration, Human Rights and Gender Equality,[1] principles and practical guidance on the protection of the human rights of migrants in vulnerable situations, on the basis of existing legal norms, and to report thereon to the Council at its thirty-seventh session. The principles and guidelines are contained in an addendum to the present document (A/HRC/37/34/Add.1).

2. Accordingly, on 23 October 2017, OHCHR addressed a note verbale to Member States and intergovernmental and non-governmental organizations, seeking their views and relevant information on the scope and content of the draft principles and guidelines, with a view to finalizing the document for submission to the Council. Member States were also asked to provide relevant information on promising practices in promoting and protecting the human rights of migrants in vulnerable situations. Written submissions were received from States, intergovernmental organizations, non-governmental organizations and individual experts.[2]

3. The principles and guidelines have previously been considered by the Human Rights Council in draft form. They were referred to in reports by the United Nations High Commissioner for Human Rights to the thirty-third session of the Council (A/HRC/33/67) and the thirty-sixth session of the Council (A/HRC/36/42). The present report follows directly upon the report (A/HRC/34/31) and conference room paper (A/HRC/34/CRP.1) submitted to the Council at its thirty-fourth session, as a progress report on the principles and guidelines. States have acknowledged and called for the continuation of the process of developing principles and guidelines, for example in Council resolution 32/14 and in paragraph 51 of the New York Declaration for Refugees and Migrants.[3]

4. The Global Migration Group Working Group on Migration, Human Rights and Gender Equality, led by the High Commissioner as co-Chair, has developed the principles and guidelines through a human rights-based, multi-stakeholder, expert process, which was open to the involvement of all relevant actors. This initiative reflects the primary stated purpose of the Global Migration Group, which, according to its terms of reference, is "to promote the wider application of all relevant international and regional instruments and norms relating to migration" and "to encourage the adoption of more coherent, comprehensive approaches to the issue of international migration."[4]

5. In view of considerations of space, the present report contains an introduction as well as a non-exhaustive glossary of key terms. The addendum to the present report contains 20 principles, along with associated guidelines with annotations. The guidelines are designed to provide guidance derived from international best practice to States and

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[1] The Working Group on Migration, Human Rights and Gender Equality is composed of the following bodies: International Labour Organization (ILO), International Organization for Migration (IOM), Office of the United Nations High Commissioner for Human Rights (OHCHR), Office of the United Nations High Commissioner for Refugees (UNHCR), United Nations Children's Fund (UNICEF), United Nations Educational, Scientific and Cultural Organization (UNESCO), United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), United Nations Office on Drugs and Crime (UNODC), United Nations University, and World Health Organization (WHO). The group is co-chaired by OHCHR and UN-Women.

[2] In addition to submissions from a large number of non-governmental organizations and individual experts, submissions were received from the European Union and the following States: Iraq, Italy, Lebanon, Malta, Mauritius, Philippines, Slovenia, Sweden, Switzerland, Turkey and United Kingdom of Great Britain and Northern Ireland. The submissions can be found on the migration page of the OHCHR website, at www.ohchr.org/EN/Issues/Migration/Pages/VulnerableSituations.aspx.

[3] General Assembly resolution 71/1, outcome document of the high-level plenary meeting on addressing large movements of refugees and migrants.

[4] See www.globalmigrationgroup.org/system/files/uploads/documents/Final_GMG_Terms_of_Reference_prioritized.pdf.

other stakeholders on upholding the human rights of migrants in vulnerable situations. A final section in the addendum sets out the legal basis for the principles, which are derived from international human rights law and related branches of law, as applicable.

II. Background

6. Around the world, the human rights of millions of migrants, including many involved in large movements or mixed movements, are insufficiently protected or at risk of abuse.

7. In the New York Declaration for Refugees and Migrants, the General Assembly recognized the complex nature of contemporary movement: "Since earliest times, humanity has been on the move. Some people move in search of new economic opportunities and horizons. Others move to escape armed conflict, poverty, food insecurity, persecution, terrorism, or human rights violations and abuses. Still others do so in response to the adverse effects of climate change, natural disasters (some of which may be linked to climate change) or other environmental factors. Many move, indeed, for a combination of these reasons."[5] The Secretary-General has also noted that, notwithstanding the gradual expansion of refugee protection, many people are compelled to leave their homes for reasons that do not fall within the refugee definition contained in the Convention relating to the Status of Refugees (see A/70/59, para. 18).[6]

8. While migration can be a positive and empowering experience for individuals and communities and can benefit countries of origin, transit and destination, it is clear that movement that places people in precarious situations is a serious human rights concern (A/HRC/31/35, 27). Where migrants fall outside the specific legal category of "refugee", it may be especially important to ensure that their human rights are respected, protected and fulfilled. Some migrants will need specific protection because of the situations they left behind, the circumstances in which they travel or the conditions they face on arrival, or because of personal characteristics such as their age, gender identity, disability or health status.

9. The principles and guidelines contained in the addendum to the present document focus on the human rights situation of those migrants who may not qualify as refugees under the Convention relating to the Status of Refugees, yet who are in vulnerable situations and thus in need of the protection of the international human rights framework (A/HRC/33/67). All persons, including non-nationals, have rights under international human rights law and related standards, and it is important to ensure that these rights are upheld. Where persons are entitled to specific protection under international instruments, it is equally important to guarantee these specific protections. Refugees and asylum seekers are entitled to specific protection under international and regional refugee law.[7] The human rights and particular needs of other persons, including children, trafficked persons, migrant workers, stateless persons and persons with disabilities, have also been recognized in specific international instruments.[8] The development of the principles and guidelines is

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[5] See also the preamble to the Paris Agreement under the United Nations Framework Convention on Climate Change.

[6] On persons who are outside their country of origin and who may not qualify as refugees under international or regional law but who may in certain circumstances also require protection from return, see UNHCR, "Persons in need of international protection", June 2017, available at www.refworld.org/docid/596787734.html.

[7] All persons who meet the refugee criteria under international refugee law are refugees for the purposes of international law, whether or not they have been formally recognized as such. See, notably, the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, the Convention Governing the Specific Aspects of Refugee Problems in Africa and the Cartagena Declaration on Refugees.

[8] See, specifically, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the ILO Migration for Employment Convention (Revised),

without prejudice to the specific rights accorded to these and other groups of people on the move.

10. When the international community adopted the Universal Declaration of Human Rights on 10 December 1948, the Declaration was accepted as a common standard for all peoples and nations. It spelled out, for the first time in human history, the minimum civil, political, economic, social and cultural rights that all human beings should enjoy. The International Bill of Human Rights (the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights) permits a distinction to be made between nationals and non-nationals in respect of only two rights, and only in certain circumstances.[9] Thus, with those narrow exceptions, the entire international human rights framework applies to all migrants, regardless of where they are, and regardless of their status.

11. Human rights are universal, inalienable, indivisible and interdependent. The international human rights framework makes clear that, to give effect to these rights and uphold the fundamental principle of non-discrimination, duty bearers must consider the unique and individual circumstances of each person.[10] By becoming parties to international human rights treaties, States assume obligations under international law and undertake to establish domestic measures and legislation reflecting those obligations.[11] As a result, there may also be practical consequences for municipal authorities and local governments. States may also be responsible for the human rights consequences of actions, or failures to act, by private actors, including corporations, members of civil society and private security contractors. They have a duty to take appropriate steps to prevent human rights abuses that

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1949 (No. 97) and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143); the Convention relating to the Status of Stateless Persons; and the Convention on the Rights of Persons with Disabilities.

[9] Article 25 of the International Covenant on Civil and Political Rights reserves to citizens the right to vote and take part in public affairs, and article 12 reserves the right to freedom of movement within a country to foreigners who are lawfully present within the country. However, in its general comment No. 15 (1986) on the position of aliens under the Covenant, the Human Rights Committee has stated that a foreigner may enjoy the protection of article 12 of ICCPR in relation to entry or residence, for example, when considerations of non-discrimination, prohibition of inhuman treatment and respect for family life arise. Article 2 (3) of the International Covenant on Economic, Social and Cultural Rights establishes one limited exception to the principle of non-discrimination on grounds of nationality in the enjoyment of the rights of the Covenant. This provision states: "Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals." However, article 2 (3) must be narrowly construed; the exception applies only to developing countries and it only concerns economic rights. Under the Covenant, a State may not discriminate on grounds of nationality or legal status. Any distinction, exclusion, restriction or preference, or other differential treatment on grounds of nationality or legal status, should be in accordance with the law, pursue a legitimate aim and remain legitimate to the aim pursued. The Committee on Economic, Social and Cultural Rights has stressed that without prejudice to the possibility for the State to order migrants who are undocumented or in an irregular situation to leave the territory, the very presence of such migrants under its jurisdiction imposes on the State certain obligations, including the primary obligation to acknowledge their presence and the fact that they can claim rights from national authorities. See E/C.12/2017/1, paras. 3, 5, 6 and 8; see also OHCHR, *The Economic, Social and Cultural Rights of Migrants in an Irregular Situation*, 2014, pp. 31–32.

[10] Article 2 of the International Covenant on Civil and Political Rights makes clear that, with respect to all rights recognized by the Convention, the duty bearer is usually the State under whose jurisdiction a person is located. It obliges States to respect the rights recognized in the Covenant and ensure that they are enjoyed by all individuals who are within its territory and/or subject to its jurisdiction, without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

[11] States assume obligations and duties under international law to respect, protect and fulfil human rights. The obligation to respect means that States must not interfere with or curtail the enjoyment of human rights. The obligation to protect requires States to protect individuals and groups against human rights abuses committed by third parties. The obligation to fulfil means that States must take positive action to facilitate the enjoyment of human rights.

they are in a position to be aware of, to investigate and punish such abuses, and provide effective remedies and reparation.

III. Concept of "migrants in vulnerable situations"

12. The vulnerable situations that migrants face can arise from a range of factors that may intersect or coexist simultaneously, influencing and exacerbating each other and also evolving or changing over time as circumstances change. The concept of vulnerability is a foundational element of the human rights framework. Together with the requirement to uphold human dignity, the need to recognize and address vulnerability underpins the legal obligation of States to respect, protect and fulfil human rights.[12] "Migrants in vulnerable situations" are thus persons who are unable effectively to enjoy their human rights, are at increased risk of violations and abuse and who, accordingly, are entitled to call on a duty bearer's heightened duty of care.

13. Factors that generate vulnerability may cause a migrant to leave their country of origin in the first place, may occur during transit or at destination, regardless of whether the original movement was freely chosen, or may be related to a migrant's identity or circumstances.[13] Vulnerability in this context should therefore be understood as both situational and personal.[14] In either case, however, migrants are not inherently vulnerable, nor do they lack resilience and agency. Rather, vulnerability to human rights violations is the result of multiple and intersecting forms of discrimination, inequality and structural and societal dynamics that lead to diminished and unequal levels of power and enjoyment of rights. As a matter of principle, and in order to ensure that every migrant is able to access appropriate protection of their rights, the situation of each person must be assessed individually.

A. Vulnerable situations associated with the reasons for leaving the country of origin

14. Among the many drivers of human movement are those that force people to move because they are unable to access their rights. In some circumstances, the resulting movement will not give rise to protection under international refugee law, but nonetheless will mean that the person is in need of the protection provided by international human rights law. Some migrants who move in these circumstances will be unable or unwilling to return to their country of origin.[15] Such drivers could include extreme poverty, natural

[12] The preamble to the Universal Declaration of Human Rights recognizes in its first two paragraphs the primary concept of dignity as well as that of vulnerability, noting that the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, but also that disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind. The international human rights mechanisms have similarly highlighted that the aim of international human rights instruments is the protection of those most vulnerable to violations and abuse of their human rights. See, inter alia, Committee on Economic, Social and Cultural Rights, general comment No. 3 (1990) on the nature of States parties' obligations, para. 12, and Committee on the Elimination of Discrimination against Women, general recommendation No. 26 (2008) on women migrant workers, para. 22.

[13] The Human Rights Council, in its resolution 35/17, expressed serious concern about the particular, vulnerable situations and risks faced by migrants, which can arise from the reasons for leaving their country of origin, circumstances encountered by migrants en route, at borders and at destination, specific aspects of a person's identity or circumstance or a combination of those factors.

[14] A human rights-based approach to migrants in vulnerable situations recognizes that both situational and personal vulnerability are created by external factors, by means of law, policy and practice. Therefore, such an approach seeks above all to empower migrants and does not stigmatize or deny them agency. See, for example, A/HRC/33/67, paras. 9–12, and A/71/285, paras. 59–61.

[15] Individuals who are outside their country of origin but who do not qualify as refugees under international or regional law may, in order to access their human rights, require protection from return on a temporary or longer-term basis, such as in the context of cross-border displacement related to disasters, climate change or other environmental factors. In some circumstances, temporary protection

disasters, climate change and environmental degradation, gender inequalities, separation from family, and lack of access to the rights to education, health, including sexual and reproductive health, decent work, or food and water. Migrants who are compelled to move are at greater risk of human rights violations throughout their migration (see A/HRC/31/35, para. 11). As noted above, in some circumstances, these drivers may sometimes give rise to refugee protection needs.[16]

B. Vulnerable situations associated with situations that migrants encounter during their journey and at destination

15. Migrants are often obliged to employ dangerous forms of transport or to travel in hazardous conditions. Many will make use of smugglers and other types of facilitator, some of whom may place them in situations of exploitation or subject them to other forms of abuse. Some may be at risk of trafficking as they move. During their journeys, migrants may lack water or adequate food, face violence or have no access to medical care. Many migrants spend long periods in transit countries, often in irregular and precarious conditions, unable to access justice and at risk of a range of human rights violations and abuses, including sexual and gender-based violence and treatment which may amount to torture and other cruel, inhuman or degrading treatment or punishment. A range of practices may put the health and safety of migrants at risk and expose them to human rights violations. These include: closure of borders; denial of access to effective screening and identification; arbitrary rejection at the border; collective expulsion; violence by State officials and other actors (including criminals and civilian militias); cruel, inhumane or degrading reception conditions; denial of humanitarian assistance; and failure to separate the delivery of services from immigration enforcement.

C. Vulnerable situations associated with a person's identity, condition or circumstances

16. As they move, some migrants are more at risk of human rights violations and abuses than others. Some will experience discrimination due, inter alia, to their age, gender, ethnicity, race, nationality, religion, language, sexual orientation, gender identity or migration status. Some experience discrimination on several and often intersecting grounds. People who are living in poverty, including because they are subject to discrimination due to their economic position, are particularly at risk of human rights abuses in the context of migration. Generally, pregnant or nursing women, persons in poor health (including those living with HIV), persons with disabilities, older persons and children, including unaccompanied or separated children, are specifically at risk because of their physical or psychological condition.

IV. Principles and guidelines

17. The international human rights framework that States have put in place provides protection to all persons, including to all migrants. However, the framework's application to migrants who are in situations of vulnerability is often less clearly understood. States (and other stakeholders) therefore lack complete guidance on how to operationalize the framework in such situations. The principles and guidelines attempt to meet this need. They provide advice to States (and other stakeholders as relevant) on how they should implement their obligations to respect, protect and fulfil the human rights of migrants who are in

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or stay arrangements may be particularly suited to providing flexible and speedy responses to such protection needs. See, on the latter, UNHCR, "Guidelines on temporary protection or stay arrangements", February 2014, available at www.refworld.org/docid/52fba2404.html.

[16] See UNHCR, "Persons in need of international protection", June 2017, available at www.refworld.org/docid/596787734.html.

vulnerable situations, including in the course of large or mixed movements. States are the primary duty bearer under international law.

18. The principles are drawn directly from international human rights law and related standards, including international labour law, as well as from international refugee law, criminal law, humanitarian law and the law of the sea, and are enshrined in treaty law, customary international law and general principles of law.[17]

19. The guidelines that follow each principle elaborate international best practice and are designed to assist States (and other stakeholders where relevant) to develop, strengthen, implement and monitor measures to protect and promote the human rights of migrants in vulnerable situations. They are derived from the instruments themselves, from authoritative interpretations or recommendations by international human rights treaty bodies and special procedure mandate holders of the Human Rights Council, as well as from other expert sources.[18]

20. It should be noted that the principles and the associated guidelines are interrelated and inform one another; the 20 principles should therefore be read together.

21. The principles and guidelines are supplemented by an inventory of "practical guidance". The latter document is regularly updated with examples of good and promising practice on the human rights protection of migrants in vulnerable situations.[19]

V. Glossary of key terms

Key term	*Definition*
Asylum seeker	An asylum seeker is any person who is seeking protection as a refugee but whose claim has not been finally determined.
Border authorities	Border guards, consular and immigration officials, border police, staff at border detention facilities, immigration and airport liaison officers, coast guard officials and other front-line officers and staff performing border governance roles.[20]
Border governance	Legislation, policies, plans, strategies, action plans and activities related to the entry of persons into, and the exit of persons from, the territory of a State. It covers detection, rescue, interception, screening, interviewing, identification, reception, detention, removal, expulsion, non-admittance and return, as well as related activities such as training, technical, financial and other assistance, including that provided to other States.[21]
Discrimination	Any distinction, exclusion, restriction or preference based on race, colour, descent, ethnic origin, sex, age, gender, sexual

[17] Selected extracts of international human rights law and related standards are listed in the annex.

[18] The guidance of international human rights treaty bodies and special procedure mandate holders has authority on several grounds. First of all, it is legally binding, to the extent that it is based on binding international human rights law. In addition, the treaty bodies were formally mandated and created under the provisions of the treaty they monitor; while the mandates of special rapporteurs are created and defined by States through the Human Rights Council. Both groups of experts benefit from their close collaboration with States in the system. Finally, the recommendations of treaty bodies and special procedure mandate holders acquire authority when international and regional judicial institutions reference them.

[19] See www.ohchr.org/EN/Issues/Migration/Pages/VulnerableSituations.aspx. It should be noted that OHCHR and the Global Migration Group have not independently verified the information contained in the inventory of good and promising practices, which is presented without claiming to be complete or geographically representative.

[20] OHCHR, *Recommended Principles and Guidelines on Human Rights at International Borders*, chap. I, para. 10 (d).

[21] Ibid., para. 10 (e).

Key term	*Definition*
	orientation, gender identity, disability, religion or belief, nationality, migration or residence status or other status which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.[22] Intersectional discrimination refers to discrimination which is based on multiple grounds, such as race, ethnicity, religion and gender, that interact with one another and produce a compound dimension of disempowerment.[23]
Firewall	Measures to separate immigration enforcement activities from public service provision, labour law enforcement and criminal justice processes to protect migrants, including migrant victims of crime, that States and non-State actors implement to ensure that persons in an irregular status are not denied their human rights.[24] Firewalls are "designed to ensure, particularly, that immigration enforcement authorities are not able to access information concerning the immigration status of individuals who seek assistance or services at, for example, medical facilities, schools and other social service institutions. Relatedly, firewalls ensure that such institutions do not have an obligation to inquire or share information about their clients' immigration status."[25]
Human rights defender	A person who, individually or with others, acts to promote and protect human rights. There is no specific definition of who is or can be a human rights defender.[26] A person or group does not need to self-identify as a human rights defender to be one. National human rights institutions which operate in compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles) can be considered human rights defenders.[27] In these principles and guidelines, "human rights defender" refers to a person who, individually or with others, acts to promote and protect the human rights of migrants. It includes

[22] International Convention on the Elimination of All Forms of Racial Discrimination, art. 1 (1); Convention on the Elimination of All Forms of Discrimination against Women, art. 1.

[23] Durban Declaration, para. 2, and Programme of Action, paras. 49, 79, 104 (c) and 172; and Committee on the Elimination of Racial Discrimination, general recommendation No. 30 (2004) on discrimination against non-citizens and general recommendation No. 32 (2009) on the meaning and scope of special measures in the Convention.

[24] See François Crépeau and Bethany Hastie, "The case for 'firewall' protections for irregular migrants: safeguarding fundamental rights", *European Journal of Migration and Law*, vol. 17, Nos. 2–3 (2015); European Commission against Racism and Intolerance, general policy recommendation No. 16 on safeguarding irregularly present migrants from discrimination; ILO, *Promoting Fair Migration: General Survey Concerning the Migrant Workers Instruments* (2016), paras. 480–482. See also European Union Agency for Fundamental Rights, "Apprehension of migrants in an irregular situation — fundamental rights considerations" (2012).

[25] Crépeau and Hastie, "The case for 'firewall' protections", p. 165.

[26] The fourth preambular paragraph of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms refers to "individuals, groups and associations ... contributing to the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals". Article 1 of the same document clarifies that "everyone has the right, individually and in association with others, to promote and to strive for protection and realization of human rights and fundamental freedoms at the national and international levels".

[27] See A/HRC/22/47, para. 23.

Key term	*Definition*
	individuals who work with or on behalf of migrants, including those who provide search and rescue services, legal advice and representation and humanitarian assistance to migrants.
Immigration detention	In these principles and guidelines, "immigration detention" includes any deprivation of liberty for the purposes of border governance and migration governance. Deprivation of liberty refers to any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence.[28]
Large movement	"Whether a movement is characterized as 'large' depends less on the absolute number of people moving than on its geographical context, the receiving States' capacities to respond and the impact caused by its sudden or prolonged nature on the receiving country."[29] "'Large movements' may be understood to reflect a number of considerations, including: the number of people arriving, the economic, social and geographical context, the capacity of a receiving State to respond and the impact of a movement which is sudden or prolonged. The term does not, for example, cover regular flows of migrants from one country to another."[30]
Migrant	International migrant (migrant) refers to "any person who is outside a State of which they are a citizen or national, or, in the case of a stateless person, their State of birth or habitual residence".[31] There is no universal and legal definition of "migrant". Throughout the principles and guidelines, the term "migrant" refers to migrants in vulnerable situations.[32] The term "migrants in vulnerable situations" does not include refugees, and is without prejudice to the protection regimes that exist under international law for specific legal categories of non-nationals, including refugees, asylum seekers, stateless persons, trafficked persons and migrant workers.
Migrant worker	A person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national.[33]

[28] Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, art. 4 (1) and (2).

[29] See A/70/59, para. 11.

[30] New York Declaration for Refugees and Migrants, para. 6.

[31] See OHCHR, Recommended Principles and Guidelines chap. I, para. 10. UNHCR consistently distinguishes between refugees and migrants, both to be clear about the causes and character of refugee movements and to keep in view the specific entitlements of refugees in international law.

[32] For an explanation of the term "migrants in vulnerable situations", see the introduction.

[33] International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, art. 2. See also the Migration for Employment Convention (Revised), 1949 No. 97, art. 11 and the Migrant Workers (Supplementary Provisions) Convention, 1975 No. 143, art. 11.

Key term	*Definition*
Migration governance	A process in which the combined framework of legal norms and organizational structures regulate and shape how States act in response to international migration, addressing rights and responsibilities and promoting cooperation within and among countries.[34]
Mixed migration	Describes the cross-border movement of people who have a variety of protection profiles, reasons for moving and needs but who move along the same routes, use the same forms of transport or means of travel, and often travel irregularly.[35] There is no official or agreed definition of "mixed migration".
Non-refoulement	Under international human rights law, the prohibition of refoulement entails an obligation not to extradite, deport, expel, return or otherwise remove a person, whatever their status, when there are substantial grounds for believing that the individual would be at risk of being subjected to torture or cruel, inhuman and degrading treatment or punishment, or other serious human rights violations, in the place to which they are to be transferred or removed, or of further transfer to a third State where there would be a real risk of such violations.[36] Human rights mechanisms have underlined that, under international human rights law, the prohibition of refoulement is absolute.[37] Under international refugee law "No Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion."[38]
Protection based on international human rights grounds	Legal mechanisms used by States to extend protection and grant status based on international human rights instruments to persons who do not qualify for protection under international refugee law, but whose removal from the territory would be contrary to obligations under international human rights law, including the principle of non-refoulement.[39] Where these domestic legal mechanisms are not in place or have a narrow scope, the prohibition of refoulement under international human rights law continues to apply.

[34] OHCHR, *Migration and Human Rights: Improving Human Rights-Based Governance of International Migration* (2013).

[35] See Human Rights Council, Report of the Office of the United Nations High Commissioner for Human Rights on the Situation of Migrants in Transit, A/HRC/31/35, 27 January 2016, para. 10.

[36] See Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 3; and Human Rights Committee, general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 12.

[37] See A/70/303, paras. 38 and 41; and Human Rights Committee, *Israil v. Kazakhstan* (CCPR/C/103/D/2024/2011), para 9.4; and *Valetov v. Kazakhstan* (CCPR/C/110/D/2104/2011).

[38] Convention relating to the Status of Refugees, art. 33 (1).

[39] See, directly or by analogy, conclusion No. 103 (LVI) on the provision on international protection including through complementary forms of protection, adopted by the UNHCR Executive Committee.

Key term	*Definition*
Refugee	A refugee is someone outside their country of origin who is in need of international protection because of a serious threat to their life, physical integrity or freedom in the country of origin as a result of persecution, armed conflict, violence or serious public disorder against which the authorities in the home country cannot or will not protect them.[40]
Regularization	A range of legislative and administrative measures employed by States to grant legal status which would enable migrants in an irregular situation to stay lawfully in their territory.[41]
Return	Umbrella term to refer to all the various forms, methods and processes by which migrants are returned or compelled to return to their country of origin or of habitual residence, or a third country. This includes, inter alia, deportation, expulsion, removal, extradition, pushback, handover, transfer or any other return arrangement. The use of the term "return" provides no determination as to the degree of voluntariness or compulsion in the decision to return, nor of the lawfulness or arbitrariness of the return
Separated children	Children who have been separated from both parents or from their legal or customary primary caregiver but not necessarily from other relatives, and are not being cared for by an adult who, by law or custom, is responsible for their care. Children may become separated at any point during their migration.[42]
Statelessness	A stateless person is defined in article 1 (1) of the Convention relating to the Status of Stateless Persons as someone who is "not considered as a national by any State under the operation of its law".[43]

[40] See A/AC.96/830. The refugee protection mandate of UNHCR, in accordance with para. 6 A (ii) of its Statute (General Assembly resolution 428 (V), annex), covers "any person who ... owing to well-founded fear of being persecuted for reasons of race, religion, nationality or political opinion, is outside the country of his nationality [or habitual residence, for those without nationality] and is unable or, owing to such fear or for reasons other than personal convenience, is unwilling to avail himself of the protection of that country ...". For subsequent General Assembly resolutions describing the competence of the High Commissioner for Refugees, see, for example, resolutions 1673 (XVI), 2294 (XXII), 3143 (XXVIII), 31/35 (endorsing Economic and Social Council resolution 2011 (LXI)), 36/125 and 48/118.

[41] While recalling there is no right to regularization under the Convention relating to the Status of Refugees (art. 35), the International Convention on the Rights of All Migrant Workers and Members of Their Families, in its article 69 (2) requires States to consider the possibility of regularizing the situation of persons in accordance with applicable national legislation and bilateral or multilateral agreements, and in doing so to take appropriate account of the circumstances of their entry, the duration of their stay and other relevant considerations, in particular those relating to their family situations.

[42] See Committee on the Rights of the Child, general comment No. 6 (2005) on treatment of unaccompanied and separated children outside their country of origin, para. 8.

[43] The International Law Commission has concluded that the definition in article 1 (1) of the Convention forms part of customary international law (see the text of the draft articles on diplomatic protection in A/61/10, chap. IV.E.2, chap. II, Natural persons, article 8, Stateless persons and refugees, commentary, para. (3)). See also UNHCR, *Handbook on Protection of Stateless Persons under the 1954 Convention relating to the Status of Stateless Persons* (2014).

Key term	*Definition*
Unaccompanied children	Children who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for their care. Children may become unaccompanied at any point during their migration.[44]
Xenophobia	Commonly used to describe attitudes, prejudices and behaviour that reject, exclude and often vilify persons based on the fact or the perception that they are outsiders or foreign with respect to a community, society or national identity.[45] There is no universal legal definition of "xenophobia".

[44] Committee on the Rights of the Child, general comment No. 6, para. 7.

[45] See ILO, IOM and OHCHR, *International Migration, Racism, discrimination and Xenophobia* (2001), p. 2.